

1 Deborah J. Fox (SBN: 110929)
dfox@meyersnave.com
2 David Mehretu (SBN: 269398)
dmehretu@meyersnave.com
3 Kristof D. Szoke (SBN: 331561)
kszoke@meyersnave.com
4 MEYERS NAVE
707 Wilshire Blvd., 24th Floor
5 Los Angeles, California 90017
Telephone: (213) 626-2906
6 Facsimile: (213) 626-0215

7 Attorneys for Defendant
SOUTHERN CALIFORNIA
8 ASSOCIATION OF GOVERNMENTS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
11

12 CITY OF HUNTINGTON BEACH, a
California Charter City, and Municipal
13 Corporation, the HUNTINGTON
BEACH CITY COUNCIL, MAYOR
14 OF HUNTINGTON BEACH, TONY
STRICKLAND, and MAYOR PRO
15 TEM OF HUNTINGTON BEACH,
GRACEY VAN DER MARK,

16 Plaintiffs,

17 v.

18 GAVIN NEWSOM, in his official
19 capacity as Governor of the State of
California, and individually;
20 GUSTAVO VELASQUEZ in his
official capacity as Director of the State
21 of California Department of Housing
and Community Development, and
22 individually; STATE LEGISLATURE;
STATE OF CALIFORNIA
23 DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT;
24 SOUTHERN CALIFORNIA
ASSOCIATION OF
25 GOVERNMENTS; and DOES 1-50,
inclusive,

26 Defendants.
27
28

Case No. 8:23-cv-00421
The Hon. Fred W. Slaughter

**SOUTHERN CALIFORNIA
ASSOCIATION OF
GOVERNMENTS' OBJECTIONS
TO PLAINTIFFS'
DECLARATIONS IN SUPPORT OF
THEIR OPPOSITION TO MOTION
TO DISMISS FIRST AMENDED
COMPLAINT**

Date: July 27, 2023
Time: 10:00 a.m.
Crtrm. 10D

Compl. filed: March 9, 2023
First Am. Compl. filed: March 27, 2023

Trial Date: September 10, 2024

1 Defendant Southern California Association of Governments (“SCAG”)
 2 hereby objects to the Declaration of Mayor Tony Strickland in Support of Plaintiffs’
 3 Opposition to Defendants’ Motion to Dismiss [Dkt. No. 50-1] (“Strickland Decl.”),
 4 and the Declaration of Plaintiff Mayor Pro Tem Gracey Van Der Mark in Support of
 5 Plaintiffs’ Opposition to Defendants’ Motion to Dismiss [Dkt. No. 50-2] (“Van Der
 6 Mark Decl.”) (together, “the City’s Declarations”) on the grounds that the City’s
 7 Declarations constitute extrinsic evidence that may not be considered on a motion to
 8 dismiss.

9 Specifically, the scope of review “on a motion to dismiss for failure to state a
 10 claim is limited to the contents of the complaint.” *Marder v. Lopez*, 450 F.3d 445,
 11 448 (9th Cir. 2006); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.
 12 2001) [“[A] district court may not consider any material beyond the pleadings in
 13 ruling on a Rule 12(b)(6) motion”]. There are only “two exceptions” to the rule that
 14 review on a motion to dismiss is confined to the contents of the complaint, neither of
 15 which are applicable here. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,
 16 998-1008 (9th Cir. 2018) [discussing the incorporation-by-reference doctrine, and
 17 judicial notice under Federal Rule of Evidence 201].

18 Here, the City’s Declarations consist of statements and exhibits not pleaded in
 19 the City’s First Amended Complaint. Strickland Decl. ¶¶ 1-10 and Exh. 10
 20 [discussing the City of Huntington Beach’s March 21, 2023 city council meeting
 21 which concerned whether to adopt the updated Housing Element, and how the
 22 mayor felt during that meeting]; Van Der Mark Decl. ¶¶ 1-10 and Exh. 10 [same].
 23 Accordingly, they are irrelevant and may not be considered on SCAG’s Motion to
 24 Dismiss the First Amended Complaint. *Marder v. Lopez*, 450 F.3d at 448. As such,
 25 SCAG respectfully requests that the Court strike the City’s Declarations in their
 26 entirety, or decline to consider their contents when ruling on SCAG’s Motion to
 27 Dismiss the First Amended Complaint.

28

1 DATED: June 22, 2023

MEYERS NAVE

2
3
4 By: /s/ Deborah J. Fox

DEBORAH J. FOX

DAVID MEHRETU

KRISTOF D. SZOKE

Attorneys for Defendant

SOUTHERN CALIFORNIA

ASSOCIATION OF GOVERNMENTS

5
6
7
8
9
10 5391223